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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 375

Introduced by Assembly Member Buchanan
(Principal coauthor: Senator Padilla)
(Coauthor: Assembly Member Muratsuchi)

February 14, 2013

An act to amend Sections 44932, 44934, 44936, 44939, 44940, 44941, and 44944 of, and to add Section 44944.2 to, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 375, as amended, Buchanan. School employees: dismissal or suspension: hearing.

(1) Existing law prohibits a permanent employee from being dismissed except for one or more of specified causes, including, among other causes, immoral or unprofessional conduct. Existing law requires the governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend the employee, together with a written statement of charges, for unprofessional conduct or unsatisfactory performance, at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing.

This bill would require that a notice of the governing board of the school district to an employee of its intention to dismiss or suspend the employee, together with written charges filed or formulated pursuant to those procedures, be sufficient to initiate a hearing, as prescribed, and would prohibit the governing board of the school district from being required to file or serve a separate accusation. The bill would revise various procedures for providing notice of dismissal or suspension and would authorize a notice of dismissal or suspension to be given at any time of year, except a notice for a proceeding involving only charges of unsatisfactory performance, which would only be given during the instructional year of the schoolsite where the employee is physically employed. The bill would impose various requirements for the filing of a demand for a hearing and the conduct of hearings by the Office of Administrative Hearings. *The bill would prohibit a motion for immediate reversal of suspension from having a bearing on the authority of a governing board of a school district to determine the physical placement and assignment of an employee who is suspended or placed on administrative leave during the review of the motion or while dismissal charges are pending.* The bill would delete obsolete provisions relating to the suspension of a permanent employee based on knowing membership by the employee in the Communist Party.

(2) Existing law provides that upon being charged, as specified, with certain sex or controlled substance offenses, a certificated employee be placed on either a compulsory leave of absence or an optional leave of absence for certain enumerated violations.

This bill would revise the definitions of “charged with a mandatory leave of absence offense” and “charged with an optional leave of absence offense” for purposes of those provisions governing when a certificated employee is required to be placed on either a compulsory leave of absence or an optional leave of absence. Because these revisions would increase the number of employees subject to immediate placement on compulsory leave of absence, thereby increasing the duties of school districts, the bill would impose a state-mandated local program.

(3) Existing law requires in a dismissal or suspension proceeding against a permanent employee for unprofessional conduct or unsatisfactory performance, if a hearing is requested by the employee, that the hearing be commenced within 60 days from the date of the employee’s demand for a hearing.

This bill would require that the hearing be commenced within 6 months from the date of the employee’s demand for a hearing, and be

completed by a closing of the record within 7 months from the date of the employee's demand for a hearing. ~~The bill would require that, if the record cannot be closed within that timeframe, the charges be dismissed without prejudice to the governing board of the school district to refile, as specified.~~ The bill would revise various procedures for the conduct of those hearings, as prescribed. The bill would require that, in a dismissal or suspension proceeding carried out under the above provisions, the parties make specified disclosures in lieu of certain written discovery, as prescribed, and would authorize the parties to obtain discovery by oral deposition. The bill would require the governing board of the school district and the state to share equally the expenses of the hearing if the Commission on Professional Competence determines that the employee should be dismissed or suspended.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares both of the
- 2 following:
- 3 (a) Pupils, educators, administrators, school boards, and school
- 4 district employees need a teacher dismissal process that is both
- 5 fair and efficient.
- 6 (b) This act is intended to revise existing statutes in a manner
- 7 that will update and streamline the procedures for teacher discipline
- 8 and dismissal, making it more cost effective and reducing the time
- 9 necessary to complete the teacher dismissal process.
- 10 SEC. 2. Section 44932 of the Education Code is amended to
- 11 read:
- 12 44932. (a) A permanent employee shall not be dismissed
- 13 except for one or more of the following causes:
- 14 (1) Immoral conduct.
- 15 (2) Unprofessional conduct.

1 (3) Commission, aiding, or advocating the commission of acts
2 of criminal syndicalism, as prohibited by Chapter 188 of the
3 Statutes of 1919, or in any amendment thereof.

4 (4) Dishonesty.

5 (5) Unsatisfactory performance.

6 (6) Evident unfitness for service.

7 (7) Physical or mental condition unfitting him or her to instruct
8 or associate with children.

9 (8) Persistent violation of or refusal to obey the school laws of
10 the state or reasonable regulations prescribed for the government
11 of the public schools by the state board or by the governing board
12 of the school district employing him or her.

13 (9) Conviction of a felony or of any crime involving moral
14 turpitude.

15 (10) Violation of Section 51530 or conduct specified in Section
16 1028 of the Government Code, added by Chapter 1418 of the
17 Statutes of 1947.

18 (11) Alcoholism or other drug abuse that makes the employee
19 unfit to instruct or associate with children.

20 (b) The governing board of a school district may suspend
21 without pay for a specific period of time on grounds of
22 unprofessional conduct a permanent certificated employee or, in
23 a school district with an average daily attendance of less than 250
24 pupils, a probationary employee, pursuant to the procedures
25 specified in Sections 44933, 44934, 44935, 44936, 44937, 44943,
26 and 44944. This authorization shall not apply to a school district
27 that has adopted a collective bargaining agreement pursuant to
28 subdivision (b) of Section 3543.2 of the Government Code.

29 SEC. 3. Section 44934 of the Education Code is amended to
30 read:

31 44934. (a) Upon the filing of written charges, duly signed and
32 verified by the person filing them, with the governing board of the
33 school district, or upon a written statement of charges formulated
34 by the governing board of the school district, charging that there
35 exists cause, as specified in Section 44932 or 44933, for the
36 dismissal or suspension of a permanent employee of the school
37 district, the governing board of the school district may, upon
38 majority vote, except as provided in this article if it deems the
39 action necessary, give notice to the permanent employee of its
40 intention to dismiss or suspend him or her at the expiration of 30

1 days from the date of service of the notice, unless the employee
2 demands a hearing as provided in this article. Suspension
3 proceedings may be initiated pursuant to this section only if the
4 governing board of the school district has not adopted a collective
5 bargaining agreement pursuant to subdivision (b) of Section 3543.2
6 of the Government Code.

7 (b) Any written statement of charges of unprofessional conduct
8 or unsatisfactory performance shall specify instances of behavior
9 and the acts or omissions constituting the charge so that the teacher
10 will be able to prepare his or her defense. It shall, where applicable,
11 state the statutes and rules that the teacher is alleged to have
12 violated, and it shall also set forth the facts relevant to each
13 occasion of alleged unprofessional conduct or unsatisfactory
14 performance.

15 (c) If the governing board of the school district has given notice
16 to a permanent employee of its intention to dismiss or suspend
17 him or her, based upon written charges filed or formulated pursuant
18 to this section, the charges may be amended only upon motion
19 before an administrative law judge of the Office of Administrative
20 Hearings. The amendment of charges shall not result in any
21 prejudice to the responding party. No motion to amend shall be
22 granted less than 90 days before the hearing on the charges if it
23 would extend the close of the record beyond the seven-month
24 deadline pursuant to paragraph (1) of subdivision (a) of Section
25 44944.

26 (d) A notice of the governing board of the school district to an
27 employee of its intention to dismiss or suspend him or her, together
28 with written charges filed or formulated pursuant to this section,
29 shall be sufficient to initiate a hearing under Section 11503 of the
30 Government Code, and the governing board of the school district
31 shall not be required to file or serve a separate accusation.

32 (e) This section shall also apply to the suspension of
33 probationary employees in a school district with an average daily
34 attendance of less than 250 pupils that has not adopted a collective
35 bargaining agreement pursuant to subdivision (b) of Section 3542.2
36 of the Government Code.

37 SEC. 4. Section 44936 of the Education Code is amended to
38 read:

1 44936. (a) The notice of dismissal or suspension in a
2 proceeding initiated pursuant to Section 44934 may be given at
3 any time of year.

4 (b) Notwithstanding subdivision (a), the notice of dismissal or
5 suspension in a proceeding involving only charges of unsatisfactory
6 performance initiated pursuant to Section 44934 shall only be
7 given during the instructional year of the schoolsite where the
8 employee is physically employed.

9 (c) The notice of dismissal or suspension given during the
10 instructional year of the schoolsite where the employee is
11 physically employed shall be in writing and be served upon the
12 employee personally or by United States registered mail addressed
13 to him or her at his or her last known address. A copy of the
14 charges filed, containing the information required by Section 11503
15 of the Government Code, together with a copy of the provisions
16 of this article, shall be attached to the notice.

17 (d) A notice of dismissal or suspension given outside of the
18 instructional year of the schoolsite where the employee is
19 physically employed shall be in writing and shall be served upon
20 the employee personally. A copy of the charges filed, containing
21 the information required pursuant to Section 11503 of the
22 Government Code, together with a copy of the provisions of this
23 article, shall be attached to the notice.

24 SEC. 5. Section 44939 of the Education Code is amended to
25 read:

26 44939. (a) Upon the filing of written charges, duly signed and
27 verified by the person filing them with the governing board of a
28 school district, or upon a written statement of charges formulated
29 by the governing board of a school district, charging a permanent
30 employee of the school district with immoral conduct, conviction
31 of a felony or of any crime involving moral turpitude, with
32 incompetency due to mental disability, or with willful refusal to
33 perform regular assignments without reasonable cause, as
34 prescribed by reasonable rules and regulations of the employing
35 school district, the governing board may, if it deems that action
36 necessary, immediately suspend the employee from his or her
37 duties and give notice to him or her of his or her suspension, and
38 that 30 days after service of the notice, he or she will be dismissed,
39 unless he or she demands a hearing.

1 (b) (1) An employee who has been placed on suspension
2 pursuant to this section may serve and file with the Office of
3 Administrative Hearings a motion for immediate reversal of
4 suspension. Review of a motion filed pursuant to this section shall
5 be limited to a determination as to whether the facts as alleged in
6 the statement of charges, if true, are sufficient to constitute a basis
7 for immediate suspension under this section. The motion shall
8 include a memorandum of points and authorities setting forth law
9 and argument supporting the employee's contention that the
10 statement of charges does not set forth a sufficient basis for
11 immediate suspension.

12 (2) The motion shall be served upon the governing board of the
13 school district and filed within 30 days after service upon the
14 employee of the initial pleading in the matter. The governing board
15 of the school district shall have the right to serve and file a written
16 response to the motion before or at the time of hearing.

17 (3) The hearing on the motion for immediate reversal of
18 suspension shall be held no later than 30 days after the motion is
19 filed with the Office of Administrative Hearings.

20 (4) The administrative law judge shall, no later than 15 days
21 after the hearing, issue an order denying or granting the motion.
22 The order shall be in writing, and a copy of the order shall be
23 served by the Office of Administrative Hearings upon the parties.
24 The grant or denial of the motion shall be without prejudice to
25 consideration by the Commission on Professional Competence,
26 based upon the full evidentiary record before it, of the validity of
27 the grounds for dismissal. The ruling shall not be considered by
28 the commission in determining the validity of the grounds for
29 dismissal, and shall not have any bearing on the commission's
30 determination regarding the grounds for dismissal.

31 (5) An order granting a motion for immediate reversal of
32 suspension shall become effective within five days of service of
33 the order. The school district shall make the employee whole for
34 any lost wages, benefits, and compensation within 14 days of
35 service of an order granting the motion.

36 (6) A motion made pursuant to this section shall be the exclusive
37 means of obtaining interlocutory review of suspension pending
38 dismissal. The grant or denial of the motion shall not be subject
39 to interlocutory judicial review.

1 (c) *A motion for immediate reversal of suspension pursuant to*
2 *this section shall have no bearing on the authority of a governing*
3 *board of a school district to determine the physical placement and*
4 *assignment of an employee who is suspended or placed on*
5 *administrative leave during the review of the motion or while*
6 *dismissal charges are pending.*

7 SEC. 6. Section 44940 of the Education Code is amended to
8 read:

9 44940. (a) For purposes of this section, “charged with a
10 mandatory leave of absence offense” is defined to mean charged
11 by complaint, information, or indictment filed in a court of
12 competent jurisdiction with the commission of any sex offense as
13 defined in Section 44010, with a violation or attempted violation
14 of Section 187 of the Penal Code, or with the commission of any
15 offense involving aiding or abetting the unlawful sale, use, or
16 exchange to minors of controlled substances listed in Schedule I,
17 II, or III, as contained in Sections 11054, 11055, and 11056 of the
18 Health and Safety Code.

19 (b) For purposes of this section, “charged with an optional leave
20 of absence offense” is defined to mean a charge by complaint,
21 information, or indictment filed in a court of competent jurisdiction
22 with the commission of any controlled substance offense as defined
23 in Section 44011 or 87011, Sections 11357 to 11361, inclusive,
24 or Section 11363, 11364, or 11370.1 of the Health and Safety
25 Code, insofar as these sections relate to any controlled substances.

26 (c) For purposes of this section and Section 44940.5, the term
27 “school district” includes county offices of education.

28 (d) (1) If a certificated employee of a school district is charged
29 with a mandatory leave of absence offense, as defined in
30 subdivision (a), upon being informed that a charge has been filed,
31 the governing board of the school district shall immediately place
32 the employee on compulsory leave of absence. The duration of
33 the leave of absence shall be until a time not more than 10 days
34 after the date of entry of the judgment in the proceedings. No later
35 than 10 days after receipt of the complaint, information, or
36 indictment described by subdivision (a), the school district shall
37 forward a copy to the Commission on Teacher Credentialing.

38 (2) Upon receiving a copy of a complaint, information, or
39 indictment described in subdivision (a) and forwarded by a school
40 district, the Commission on Teacher Credentialing shall

1 automatically suspend the employee's teaching or service
2 credential. The duration of the suspension shall be until a time not
3 more than 10 days after the date of entry of the judgment in the
4 proceedings.

5 (e) (1) If a certificated employee of a school district is charged
6 with an optional leave of absence offense as defined in subdivision
7 (b), the governing board of the school district may immediately
8 place the employee upon compulsory leave in accordance with the
9 procedure in this section and Section 44940.5. If any certificated
10 employee is charged with an offense deemed to fall into both the
11 mandatory and the optional leave of absence categories, as defined
12 in subdivisions (a) and (b), that offense shall be treated as a
13 mandatory leave of absence offense for purposes of this section.
14 No later than 10 days after receipt of the complaint, information,
15 or indictment described by subdivision (a), the school district shall
16 forward a copy to the Commission on Teacher Credentialing.

17 (2) Upon receiving a copy of a complaint, information, or
18 indictment described in subdivision (a) and forwarded by a school
19 district, the Commission on Teacher Credentialing shall
20 automatically suspend the employee's teaching or service
21 credential. The duration of the suspension shall be until a time not
22 more than 10 days after the date of entry of the judgment in the
23 proceedings.

24 SEC. 7. Section 44941 of the Education Code is amended to
25 read:

26 44941. (a) The notice of suspension and intention to dismiss
27 shall be in writing and be served pursuant to Section 44936. A
28 copy of the charges filed, containing the information required by
29 Section 11503 of the Government Code, together with a copy of
30 the provisions of this article, shall be attached to the notice. If the
31 employee does not demand a hearing within the 30-day period, he
32 or she may be dismissed upon the expiration of 30 days after
33 service of the notice.

34 (b) An employee who demands a hearing shall file a single
35 document containing his or her request for a hearing pursuant to
36 this section and a notice of defense pursuant to Sections 11505
37 and 11506 of the Government Code.

38 SEC. 8. Section 44944 of the Education Code is amended to
39 read:

1 44944. (a) (1) (A) In a dismissal or suspension proceeding
2 initiated pursuant to Section 44934, if a hearing is requested by
3 the employee, the hearing shall be commenced within six months
4 from the date of the employee's demand for a hearing. A
5 continuance shall not extend the date for the commencement of
6 the hearing more than six months from the date of the employee's
7 request for a hearing, except for extraordinary circumstances, as
8 determined by the administrative law judge. If extraordinary
9 circumstances are found that extend the date for the commencement
10 of the hearing, the deadline for concluding the hearing and closing
11 the record pursuant to this subdivision shall be extended for a
12 period of time equal to the continuance. The hearing date shall be
13 established after consultation with the employee and the governing
14 board, or their representatives, except that, if the parties are not
15 able to reach agreement on a date, the Office of Administrative
16 Hearings shall unilaterally set a date in compliance with this
17 section. The hearing shall be completed by a closing of the record
18 within seven months of the date of the employee's demand for a
19 hearing. A continuance shall not extend the date for the close of
20 the record more than seven months from the date of the employee's
21 request for a hearing, except for ~~extraordinary circumstances~~ *good*
22 *cause*, as determined by the administrative law judge, or, where
23 *judge*.

24 (B) *Where* substantial progress has been made in completing
25 the previously scheduled days of the hearing within the
26 seven-month period but the hearing cannot be completed, for good
27 cause shown, within the seven-month period, the period for
28 completing the hearing may be extended by the presiding
29 administrative law judge ~~for a period not to exceed 30 days~~ *judge*.
30 *If the administrative law judge grants a continuance under this*
31 *subparagraph, he or she shall establish a reasonable timetable*
32 *for the completion of the hearing and the closing of the record.*
33 The hearing shall be initiated and conducted, and a decision made,
34 in accordance with Chapter 5 (commencing with Section 11500)
35 of Part 1 of Division 3 of Title 2 of the Government Code, and the
36 Commission ~~of~~ *on* Professional Competence shall have all of the
37 power granted to an agency pursuant to that chapter, except as
38 described in this article.

39 (2) ~~If the record cannot be closed within the timeframe~~
40 ~~established by paragraph (1), the charges shall be dismissed without~~

1 ~~prejudice to the governing board to refile within 30 days a notice~~
2 ~~of dismissal on the same charges.~~

3 ~~(3)~~

4 (2) (A) A witness shall not be permitted to testify at the hearing
5 except upon oath or affirmation. No testimony shall be given or
6 evidence introduced relating to matters that occurred more than
7 four years before the date of the filing of the notice, except
8 allegations of an act described in Section 44010 of this code or
9 Sections 11165.2 to 11165.6, inclusive, of the Penal Code.

10 (B) Evidence of records regularly kept by the governing board
11 concerning the employee may be introduced, but no decision
12 relating to the dismissal or suspension of an employee shall be
13 made based on charges or evidence of any nature relating to matters
14 occurring more than four years before the filing of the notice,
15 except allegations of an act described in Section 44010 of this code
16 or Sections 11165.2 to 11165.6, inclusive, of the Penal Code.

17 (b) (1) The hearing provided for in this section shall be
18 conducted by a Commission on Professional Competence, unless
19 the parties submit a statement in writing to the Office of
20 Administrative Hearings, indicating that both parties waive the
21 right to convene a Commission on Professional Competence and
22 stipulate to having the hearing conducted by a single administrative
23 law judge. If the parties elect to waive a hearing before the
24 Commission on Professional Competence, the hearing shall be
25 initiated and conducted, and a decision made, in accordance with
26 Chapter 5 (commencing with Section 11500) of Part 1 of Division
27 3 of Title 2 of the Government Code and the administrative law
28 judge conducting the hearing shall have all the powers granted to
29 a Commission on Professional Competence pursuant to that
30 chapter, except as described in this article.

31 (2) If the parties elect not to waive a hearing before a
32 Commission on Professional Competence, one member of the
33 commission shall be selected by the employee, one member shall
34 be selected by the governing board, and one member shall be an
35 administrative law judge of the Office of Administrative Hearings
36 who shall be chairperson and a voting member of the commission
37 and shall be responsible for assuring that the legal rights of the
38 parties are protected at the hearing.

39 (3) The governing board and the employee shall select
40 Commission on Professional Competence members no later than

1 45 days before the date set for hearing, and shall serve notice of
2 their selection upon all other parties and upon the Office of
3 Administrative Hearings. Failure to meet this deadline shall
4 constitute a waiver of the right to selection, and the county board
5 of education or its specific designee shall immediately make the
6 selection. If the county board of education is also the governing
7 board of the school district or has by statute been granted the
8 powers of a governing board, the selection shall be made by the
9 Superintendent, who shall be reimbursed by the school district for
10 all costs incident to the selection.

11 (4) Any party who believes that a selected Commission on
12 Professional Competence member is not qualified may file an
13 objection, including a statement describing the basis for the
14 objection, with the Office of Administrative Hearings and serve
15 the objection and statement upon all other parties within 10 days
16 of the date that the notice of selection is filed. Within seven days
17 after the filing of any objection, the administrative law judge
18 assigned to the matter shall rule on the objection or convene a
19 teleconference with the parties for argument.

20 (5) (A) The member selected by the governing board and the
21 member selected by the employee shall not be related to the
22 employee and shall not be employees of the school district initiating
23 the dismissal or suspension. Each member shall hold a currently
24 valid credential and have at least three years' experience within
25 the past 10 years in the discipline of the employee.

26 (B) *For purposes of this paragraph, the following terms have*
27 *the following meanings:*

28 (i) *For an employee subject to dismissal whose most recent*
29 *teaching assignment is in kindergarten or any of the grades 1 to*
30 *6, inclusive, "discipline" means a teaching assignment in*
31 *kindergarten or any of the grades 1 to 6, inclusive.*

32 (ii) *For an employee subject to dismissal whose most recent*
33 *assignment requires an education specialist credential or a services*
34 *credential, "discipline" means an assignment that requires an*
35 *education specialist credential or a services credential,*
36 *respectively.*

37 (iii) *For an employee subject to dismissal whose most recent*
38 *teaching assignment is in any of the grades 7 to 12, inclusive,*
39 *"discipline" means a teaching assignment in any of grades 7 to*
40 *12, inclusive, in the same area of study, as that term is used in*

1 *Section 51220, as the most recent teaching assignment of the*
2 *employee subject to dismissal.*

3 (c) (1) The decision of the Commission on Professional
4 Competence shall be made by a majority vote, and the commission
5 shall prepare a written decision containing findings of fact,
6 determinations of issues, and a disposition that shall be, solely,
7 one of the following:

8 (A) That the employee should be dismissed.

9 (B) That the employee should be suspended for a specific period
10 of time without pay.

11 (C) That the employee should not be dismissed or suspended.

12 (2) The decision of the Commission on Professional Competence
13 that the employee should not be dismissed or suspended shall not
14 be based on nonsubstantive procedural errors committed by the
15 school district or governing board unless the errors are prejudicial
16 errors.

17 (3) The Commission on Professional Competence shall not have
18 the power to dispose of the charge of dismissal by imposing
19 probation or other alternative sanctions. The imposition of
20 suspension pursuant to subparagraph (B) of paragraph (1) shall be
21 available only in a suspension proceeding authorized pursuant to
22 subdivision (b) of Section 44932 or Section 44933.

23 (4) The decision of the Commission on Professional Competence
24 shall be deemed to be the final decision of the governing board.

25 (5) The governing board may adopt from time to time rules and
26 procedures not inconsistent with this section as may be necessary
27 to effectuate this section.

28 (6) The governing board and the employee shall have the right
29 to be represented by counsel.

30 (d) (1) If the member selected by the governing board or the
31 member selected by the employee is employed by any school
32 district in this state, the member shall, during any service on a
33 Commission on Professional Competence, continue to receive
34 salary, fringe benefits, accumulated sick leave, and other leaves
35 and benefits from the school district in which the member is
36 employed, but shall receive no additional compensation or
37 honorariums for service on the commission.

38 (2) If the member selected is a retired employee, the member
39 shall receive pay at the daily substitute teacher rate in the school
40 district that is a party to the hearing. Service on a Commission on

1 Professional Competence shall not be credited toward retirement
2 benefits.

3 (3) If service on a Commission on Professional Competence
4 occurs during summer recess or vacation periods, the member shall
5 receive compensation proportionate to that received during the
6 current or immediately preceding contract period from the
7 member's employing school district, whichever amount is greater.

8 (e) (1) If the Commission on Professional Competence
9 determines that the employee should be dismissed or suspended,
10 the governing board and the state shall share equally the expenses
11 of the hearing, including the cost of the administrative law judge.
12 The state shall pay any costs incurred under paragraphs (2) and
13 (3) of subdivision (d), the reasonable expenses, as determined by
14 the administrative law judge, of the member selected by the
15 governing board and the member selected by the employee,
16 including, but not limited to, payments or obligations incurred for
17 travel, meals, and lodging, and the cost of the substitute or
18 substitutes, if any, for the member selected by the governing board
19 and the member selected by the employee. The Controller shall
20 pay all claims submitted pursuant to this paragraph from the
21 General Fund, and may prescribe reasonable rules, regulations,
22 and forms for the submission of the claims. The employee and the
23 governing board shall pay their own attorney's fees.

24 (2) If the Commission on Professional Competence determines
25 that the employee should not be dismissed or suspended, the
26 governing board shall pay the expenses of the hearing, including
27 the cost of the administrative law judge, any costs incurred under
28 paragraphs (2) and (3) of subdivision (d), the reasonable expenses,
29 as determined by the administrative law judge, of the member
30 selected by the governing board and the member selected by the
31 employee, including, but not limited to, payments or obligations
32 incurred for travel, meals, and lodging, the cost of the substitute
33 or substitutes, if any, for the member selected by the governing
34 board and the member selected by the employee, and reasonable
35 attorney's fees incurred by the employee.

36 (3) As used in this section, "reasonable expenses" shall not be
37 deemed "compensation" within the meaning of subdivision (d).

38 (4) If either the governing board or the employee petitions a
39 court of competent jurisdiction for review of the decision of the
40 Commission on Professional Competence, the payment of expenses

1 to members of the commission required by this subdivision shall
2 not be stayed.

3 (5) If the decision of the Commission on Professional
4 Competence is finally reversed or vacated by a court of competent
5 jurisdiction, either the state, having paid the commission members'
6 expenses, shall be entitled to reimbursement from the governing
7 board for those expenses, or the governing board, having paid the
8 expenses, shall be entitled to reimbursement from the state.

9 (f) The hearing provided for in this section shall be conducted
10 in a place selected by agreement among the members of the
11 Commission on Professional Competence. In the absence of
12 agreement, the place shall be selected by the administrative law
13 judge.

14 SEC. 9. Section 44944.2 is added to the Education Code, to
15 read:

16 44944.2. (a) In a dismissal or suspension proceeding under
17 Section 44944, in lieu of written discovery required pursuant to
18 Section 11507.6 of the Government Code, the parties shall make
19 disclosures as described in this section.

20 (1) An initial disclosure shall comply with the following
21 requirements:

22 (A) A party shall, without awaiting a discovery request, provide
23 to the other parties both of the following:

24 (i) The name and, if known, the address and telephone number
25 of each individual likely to have discoverable information, along
26 with the subjects of that information, that the disclosing party may
27 use to support its claims or defenses, unless the use would be solely
28 for impeachment purposes.

29 (ii) A copy of all documents, electronically stored information,
30 and tangible items that the disclosing party has in its possession,
31 custody, or control and may use to support its claims or defenses,
32 unless the use would be solely for impeachment.

33 (B) The school district and the employee shall make their initial
34 disclosures within 45 days of the date of the employee's demand
35 for a hearing.

36 (C) A party shall make its initial disclosures based on the
37 information then reasonably available to it. A party is not excused
38 from making its disclosures because it has not fully investigated
39 the case or because it challenges the sufficiency of another party's
40 disclosures. A party's failure to make initial disclosures within the

1 deadlines set forth in this section shall preclude the party from
2 introducing witnesses or evidence not disclosed at the hearing,
3 unless the party shows good cause for its failure to timely disclose.

4 (D) A party has an obligation to promptly supplement its initial
5 disclosures as new information or evidence becomes known or
6 available. Supplemental disclosures shall be made as soon as
7 possible, and no later than 60 days before the date of
8 commencement of the hearing. A party's failure to make
9 supplemental disclosures promptly upon discovery or availability
10 of new information or evidence shall preclude the party from
11 introducing witnesses or evidence not disclosed at the hearing,
12 unless the party shows good cause for its failure to timely disclose.

13 (2) The disclosure of expert testimony shall comply with the
14 following requirements:

15 (A) A party shall also disclose to the other parties the identities
16 of any expert witnesses whose testimony it may use at the hearing.

17 (B) The disclosure specified in subparagraph (A) shall be
18 accompanied by a summary of the witness' expected testimony,
19 including a description of the facts and data considered by the
20 witness; a description of the witness' qualifications, including a
21 list of all publications authored in the previous 10 years; a list of
22 all other cases in which, during the previous four years, the witness
23 testified as an expert at a hearing or by deposition; and a statement
24 of the compensation to be paid to the expert witness.

25 (C) Expert witness disclosures shall be made no later than 60
26 days before the date of commencement of the hearing. A party's
27 failure to make full and timely expert witness disclosures shall
28 preclude the party's use of the expert witness' testimony or
29 evidence at the hearing.

30 (3) Prehearing disclosures shall comply with the following
31 requirements:

32 (A) In addition to the disclosures required in paragraphs (1) and
33 (2), a party shall provide to the other parties the following
34 information about the evidence that it may present at the hearing:

35 (i) The name, and if not previously provided, the address and
36 telephone number of each witness, separately identifying those
37 the party expects to present and those it may call if the need arises.

38 (ii) An identification of each exhibit, separately identifying
39 those items the party expects to offer and those it may offer if the
40 need arises.

1 (B) Prehearing disclosures shall be made at least 30 days before
2 the hearing.

3 (i) Within 14 days after prehearing disclosures are made, a party
4 shall file and serve any objections, along with the grounds for each
5 objection, to the admissibility of evidence.

6 (ii) These objections shall be decided on the first day of hearing,
7 or at a prehearing conference conducted pursuant to Section
8 11511.5 of the Government Code. Documents and individuals not
9 timely disclosed without good cause shall be precluded from
10 admission at the hearing.

11 (b) In addition to the disclosures required by subdivision (a),
12 the parties may obtain discovery by oral deposition in California,
13 in accordance with Sections 2025.010 to 2025.620, inclusive, of
14 the Code of Civil Procedure, except as described in this article.
15 The school district may take the depositions of the employee and
16 no more than four other witnesses, and the employee may take
17 depositions of no more than five witnesses. Each witness deposition
18 is limited to seven hours.

19 (c) If the right to disclosures or oral depositions is denied by
20 either the employee or the governing board, the exclusive right of
21 a party seeking an order compelling production of discovery shall
22 be pursuant to Section 11507.7 of the Government Code. If a party
23 seeks protection from unreasonable or oppressive discovery
24 demands, the exclusive right of a party seeking an order for
25 protection shall be pursuant to Section 11450.30 of the Government
26 Code.

27 SEC. 10. If the Commission on State Mandates determines
28 that this act contains costs mandated by the state, reimbursement
29 to local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.